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The painful disturbances which are agitating modern democracies show that they are radically dissatisfied with their lot and are longing for new institutions. They are demanding everywhere old-age pensions for the working people of the cities and of the country, assurance against disease and enforced idleness, and these demands are becoming every day more and more imperious. Now it is most evident that the only means of providing for these social needs is the employment for these purposes of what now goes into the military budgets. There is no other, for the imposts have already reached a point which it is almost impossible to pass without seriously injuring production. The reduction of war expenses is therefore no longer a mere desire of humanitarians and idealists. It is an imperious social necessity.

The present condition of the Russian empire illustrates in a tragic manner the truth of the doctrines of the peace makers. May this lesson not be lost! The governments of the other countries ought to learn from this example that an agreement rendering disarmament possible is henceforth indispensable. Conquests by violence ought forever to be renounced. The determination should be reached to respect strictly the rights of peoples and to settle boundary questions by juridical means. Those who desire still to follow an antiquated policy according to the puerile ideas of the middle ages take upon their heads a terrible responsibility.

It is therefore henceforth the imperative duty of every conscientious man to labor courageously to prevent these possible misfortunes by the establishment of a juridic union of the civilized nations, which is the only means of giving to the peoples of the earth what they have the legitimate right to demand, a comfortable and happy existence.

## Extension of the Scope of Arbitration Treaties and of the Jurisdiction of the Hague Court.

ADDRESS OF SIR THOMAS BARCLAY AT THE BERLIN CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION, OCTOBER 2.

The "Convention for the Pacific Settlement of International Disputes," signed at The Hague on July 29, 1899, provided only for voluntary or optional arbitration. All idea of compulsion, in fact, was specifically excluded throughout the Convention. Thus the signatory powers undertook, in case of grave disagreement of conflict, before appealing to arms, only "as far as circumstances allow," to have recourse to the good offices or mediation of one or more friendly powers; and only "as far as circumstances allow" were the powers to tender their good offices. Provision was made, "as far as circumstances allow," and where involving "neither national honor nor vital interests," for international commissions of inquiry, which were even to have no binding character for the parties, etc.

Under the subsequent Anglo-French Treaty, the contracting states obliged themselves to submit to the Hague Court "differences of a judicial order, or relative to the interpretation of existing treaties," on condition that "neither the vital interests nor the independence or honor of the two contracting states, nor the interests of any state other than the two contracting states, are involved." This formula has been followed in the treaties with other states entered into by Great Britain and France. It is obvious that the enforcing of such a treaty depends entirely upon the consent of both parties, and that either party, by raising the contention that the matter at issue is vital or involves national honor, can set it aside. By referring such cases to the Hague Court, however, all the effect intended by those who met at the Conference of 1899 has since been given to its program.

Though states seem no longer reluctant to resort to the Hague Court, and public opinion has come to view it with increasing favor, and several important cases have already been submitted to it, no progress has been made towards compulsory arbitration as a pacific means of settling questions of vital interest as between any states which might otherwise be exposed to the danger of war.

The new Hague Conference, in dealing with the question of extending the scope of arbitration, will have to bear in mind that a treaty of arbitration, to fulfill its purpose of avoiding any break in the amicable relations between states, must be, at the same time, general, obligatory and automatic.

It must be general, because its purpose is defeated if, when the crisis comes, one or the other party can dispute the applicability of the treaty to the matter at issue. It must be obligatory, because, if it is not, a treaty of submission must be negotiated at the worst possible moment for negotiations, namely, at a moment when the state of national feeling may threaten to suspend negotiations altogether. For the same reason it must be automatic.

In short, the operation of the treaty, if it is to serve the cause of peace in times of great emergency, must be instantaneous. The jurisdiction which has failed must *ipso facto* be succeeded by the new jurisdiction, with its new men and its new methods.

Different systems have been adopted by contracting governments for the reference of *all* difficulties without distinction to arbitration. The one, as in the Chile-Argentine Treaty of May 28, 1902, refers them to a specified independent government (in the case of the Chile-Argentine Treaty, to the British government, and in default of the British to the Swiss government). In the unratified treaty of July 25, 1898, between Italy and Argentina, it was provided that the arbitral tribunal should be composed of three judges, two appointed by the parties and an umpire chosen by the two judges so appointed; in case of disagreement, the umpire to be appointed by an independent state; in case of disagreement as to the state, to be appointed by the President of the Swiss Confederation, and in his default by the King of Sweden; arbitrators not to be citizens of either contracting party, nor residents in the territory of either party.

The system adopted in the unratified treaty of January 11, 1897, between Great Britain and the United States, also covered all cases of difficulty between the parties, but in other respects rested on totally different principles. There were to be three classes of arbitration tribunals. For questions of indemnity up to £100,000, three arbitrators were to be sufficient. When more than that sum was in dispute, five arbitrators were to be called in. For territorial or national questions of supreme

importance, six arbitrators were made necessary. If the arbitrators found it impossible to form the required majorities, a friendly power was to be called in to mediate. The chief clauses in the treaty were Article VI. and Article VII. Article VI. was as follows:

"*Any controversy which shall involve the determination of territorial claims* shall be submitted to a tribunal composed of six members, three of whom shall be Judges of the British Supreme Court of Judicature, or members of the Judicial Committee of the Privy Council, to be nominated by Her Britannic Majesty, and the other three of whom shall be Judges of the Supreme Court of the United States, or Justices of the Circuit Courts, to be nominated by the President of the United States, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, *the award shall also be final, unless either power shall, within three months after the award has been reported, protest* that the same is erroneous, in which case the award shall be of no validity. In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the arbitral tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the *mediation* of one or more friendly powers has been invited by one or both of the high contracting parties."

Article VII. provided for decision by a tribunal, similarly composed, of "*all questions of principle of grave general importance affecting the national rights*" of either state, as distinguished from the private rights, whereof it is merely the international representative."

The essential point in this project was that for questions of supreme national importance the arbitrators were to belong exclusively to the two contracting states. The idea which had until then prevailed in the constituting of courts of arbitration was that the arbitrator or umpire, if more than one, had necessarily to be a person who, by his independence and entire detachment from the interests involved, had the requisite impartiality for the pure and simple application of principles of justice. It was thought that nations could only apply as between themselves the same principles as they adopt for litigation between citizens.

It may be said that the word "arbitration," in connection with these provisions, is a misnomer. The treaty is called a treaty of arbitration, and the tribunal provided for in Article VI. is called an "arbitral tribunal." In reality such a tribunal is more like a joint commission. Be that as it may, it was instituted to meet the difficulty of bringing grave national issues within the operation of an arbitration treaty. It was felt that such issues could not be committed to the decision of foreign arbitrators or of a foreign umpire. The negotiators, therefore, provided that there should be neither outside arbitrators nor any umpire at all. Furthermore, to allay fears that any great national interest might be exposed to quixotic or unpractical views taken by any single judge, it was provided that, to be binding, the decision should require the concurrence against it of two out of three of the judges of either party. This precluded, by a simple and practical method, for both countries, any danger of any decision being arrived at which might shake the confidence of national opinion. The object of the two governments was manifestly to provide a further stage of negotiation and thus to enable the governments to issue from any deadlock into which they might have drifted in the heat of controversy or under pressure of public feeling. In other words, the negotiators endeavored to avoid the alleged shortcomings of arbitration, properly so called, and take advantage of the fact that joint commissions have almost invariably been successful in settling the matters referred to them.

It cannot be denied that the provisions in question are based on a reasonable view of the difficulties which beset arbitration in the minds of statesmen, where national questions of vital importance are involved. It embodies, as President Cleveland said of it, a "practical working plan" for bringing delicate matters within a general treaty. On the other hand, the Hague Convention has dealt with all matters but this very class, which was excluded from the purview of the Conference, and, as regards all others but this class, reference to the Hague Court is fast being made compulsory. Then all that seems needful to complete the work done at The Hague is to generalize the compulsory clause since adopted by most states for all judicial questions not involving vital interests and national honor, and to graft upon it some such provisions as those contained in the Anglo-American Treaty, that is, confining the choice of arbitrators, where the question is of vital importance or involves the national honor, to persons exclusively of the nationality of the states concerned, the question to be tried, like all other cases, at the Hague Court. This need not, of course, exclude any states from adopting, as some have already done, arbitration in the ordinary sense without any exceptions; and the time may come when all nations will have sufficient confidence in each other to trust the final decision of matters of vital interest to the decision of third parties. Meanwhile the principle of the Anglo-American Treaty of 1897 might be adopted by those states which are disinclined to extend the scope of arbitration properly so called.

I have endeavored to combine this principle with the arbitration and mediation clauses of the Hague Convention in the following detailed draft of a possible article on the subject:

> "If in the judgment of one or other of the high contracting parties a question may appear to involve a vital interest or the national honor, or to be of too momentous a character to be submitted to decision under Article XXXII.[1] of the said Convention,
>
> "(*a*) The Court shall be composed of judges appointed by the high contracting parties without an umpire, and in such number, not exceeding three each, as either party may demand. The judges may be nationals of the state appointing them.
>
> "(*b*) The award will not finally close the dispute unless the judges, if two, are agreed, or, if four, one of two, or, if six, two of three of either side concur with those of the other side in their decision.
>
> "(*c*) Where a case is submitted to two judges only, and they do not agree, or to four who are equally divided, or to six who are equally divided, or of whom only one concurs with the other side, the judges, nevertheless, give their judgments separately and in writing, in accordance with Art. LII.[2] of the said Convention. The two judgments shall then be submitted to the mediation[3] of a friendly power to be chosen by the parties; in case of difference in such choice, to the President of the Swiss Confederation. The mediator shall appoint a jurist to examine and report on the two judgments, and

this report shall be submitted to the judges to enable them to reconsider their decisions. The jurist who shall have made the report shall be present at the sittings for such reconsideration, with power to deliberate but not to vote. The period for which the mandate conferred on the mediator shall be given shall be thirty days, as provided by Art. VIII.[4] of the said Convention.

"(*d*) If no agreement shall be arrived at after submission and discussion of the mediator's report, the International Bureau[5] at The Hague shall immediately on the close of the final sitting have the *compromis* of submission, the respective judgments, the report thereon, and the respective final decisions printed and made public, in accordance with Art. LIII.[6] of the said Convention."

[1]Subject to an alteration to reduce the number of arbitrators to be appointed under the 3d section of Article XXXII., which is as follows: Art. XXXII.—The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Act. Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued: Each party appoints two arbitrators, and these latter together choose an umpire. In case of equal voting, the choice of the umpire is intrusted to a third power, selected by the parties by common accord. If no agreement is arrived at on this subject, each party selects a different power, and the choice of the umpire is made in concert by the powers thus selected.

[2]Art. LII.—The award given by a majority of votes is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the Tribunal. Those members who are in the minority may record their dissent when signing.

[3]Art. III.—Independently of this recourse, the signatory powers recommend that one or more powers, strangers to the dispute, should, on their own initiative and so far as circumstances may allow, offer their good offices or mediation to the states at variance. Powers, strangers to the dispute, have the right to offer good offices or mediation even during the course of hostilities. The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

[4]Art. VIII.—The signatory powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: In case of a serious difference endangering the peace, the states at variance choose respectively a power, to whom they intrust the mission of entering into direct communication with the power chosen on the other side, with the object of preventing the rupture of pacific relations. For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the states in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating powers, who must use their best efforts to settle it. In case of a definite rupture of pacific relations, these powers are charged with the joint task of taking advantage of any opportunity to restore peace.

[5]Art. XXII.—An International Bureau established at The Hague serves as record office for the Court. This Bureau is the channel for communication relative to the meetings of the Court. It has the custody of the archives, and conducts all the administrative business. The signatory powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals. They undertake also to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

[6]Art. LIII.—The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present or duly summoned to attend.

This draft is not as far-reaching as many warm advocates of arbitration consider it desirable to recommend to the attention of governments. But I feel convinced that you will agree with me that, by limiting our recommendations to what is feasible among the great powers, we shall do more for the promotion of the cause of arbitration than by advocating any scheme which, however desirable in itself, is not likely to secure the support of those who are responsible for the preservation of the security, power and prestige of their respective nations.

## Pamphlets Received.

THE WORLD STATE. By Professor C. C. Eckhardt, of the University of Missouri. Reprinted from the *Popular Science Monthly* for August, 1906.

REPORT OF PUBLIC LECTURES, New York Department of Education.

FOR AN ARREST OF ARMAMENTS. A Note for the Second Hague Conference. By G. H. Perris. London: International Arbitration and Peace Association, 40 Outer Temple, Strand. 24 pages.

UNE PAGE D'HISTOIRE PACIFISTE. By Gaston de Roy. Tournai, Belgium. 32 pages.

LES PROTESTANTS ET LA PROPAGANDE PACIFIQUE. By Hodgson Pratt and Paul Allegret. Extrait de la *Revue du Christianisme Social*. Vals-les-Bains, France: E. Aberlen et Co.

THE SECOND HAGUE PEACE CONFERENCE. By Francis William Fox. A summary of the Proposals for the Program, made by the London Interparliamentary Conference, the Lucerne Peace Congress, and the London Special Committee. London: Cole & Co., Printers, 57 Tachbrook Street, Westminster, S. W.

THE VOICE OF THE THIRD GENERATION. By Henry Peck Fry, of the Chattanooga Bar. A Discussion of the Race Question in the South. Address the Author at Chattanooga, Tenn.

THE ETHICS OF INTERNATIONALISM. By John A. Hobson, London. International Journal of Ethics for October. Philadelphia, 1415 Locust Street.

WAR. Edited by V. Tchertkoff. With readings from Tolstoy and others. Pictures (true, but horrible) by Emile Holarek. The Free Age Press: Christchurch, Hauts, England. Sixpence, net.

THE COSTLINESS OF WAR. By William Restelle of Toronto. The *Arena* for October.

THE WESTERN WORLD IN CONFERENCE. Second and Third Articles. By Sylvester Baxter. The *Outlook* for September 15 and 22.

A QUESTION OF INTERNATIONAL LAW IN THE DEPORTATION OF ALIENS. By Charles Noble Gregory, Dean of the College of Law, State University of Iowa. Reprinted from the *Juridical Review* of Edinburgh, July, 1906. Edinburgh: William Green & Sons.

LA LUTTE ORGANISEE CONTRE LES ENNEMIS DE LA PAIX. By J. C. Barolin. 15 pages. Paris: Giard et Brière, 16 rue Soufflot.

## International Arbitration and Peace Lecture Bureau, 31 Beacon Street, Boston.

The following persons may be secured to give lectures, club talks and addresses before public meetings, churches, schools and other organizations on international arbitration and peace. Those wishing their services should communicate directly with them as to dates and terms.

Mrs. Fannie Fern Andrews, 378 Newbury St., Boston.
Raymond L. Bridgman, State House, Boston.
E. Howard Brown, Earlham, Iowa.
Ernest H. Crosby, 19 Liberty St., New York City.
W. C. Dennis, State Department, Washington.
Rev. Charles F. Dole, Jamaica Plain, Mass.
Professor Cyrus W. Hodgin, Earlham College, Richmond, Ind.
Dr. George W. Hoss, Wichita, Kansas.
Rev. William G. Hubbard, Columbus, Ohio.
Miss Carolina Huidobro, 1108 Boylston St., Boston.
Edwin D. Mead, 20 Beacon St., Boston.
Lucia Ames Mead, 39 Newbury St., Boston.
Dr. Ernst Richard, Columbia University, New York.
Dr. Homer B. Sprague, The Evans, Newton, Mass.
Benjamin F. Trueblood, 31 Beacon St., Boston.

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